

Regulatory Impact Statement

Investing in Children: Enhancing Youth Justice Provisions

Ministry of Social Development

7 September 2016

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development. It provides an analysis of options to achieve a legislative framework that supports future Youth Justice services to achieve improved outcomes for vulnerable children and young people who offend or are at risk of offending. These options support the Government's proposed new operating model for vulnerable children and young people, particularly with its stronger child-centred approach, provision for early and intensive intervention services and transition services.

In March 2016, the Government considered the Modernising CYF Expert Panel's Final Report and agreed major legislative reform is required to give effect to a proposed new operating model. Legislative changes to give effect to the new operating model are being progressed in two stages:

- Stage One: the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill No 1). Bill No 1 was introduced and referred to the Social Services Committee on 15 June 2016.
- Stage Two: consists of a more complex and wide-ranging set of legislative reforms to give effect to the new operating model. These are to be included in a second Bill (Bill No 2) expected to be introduced into the House in November 2016.

The proposals in this RIS are part of the wide-ranging reform included within stage two of reform (Bill No 2). The proposals are expected to be considered by the Cabinet Social Policy Committee (SOC) in September 2016. The proposals in this RIS address:

- prevention of offending by children and young people and early intervention once offending occurs
- supporting a child-centred approach with the enhancement of the rights of children and young people in the Youth Justice system
- supporting restorative justice opportunities for victims and young people
- supporting community-based options as an alternative to detention in custody
- supporting a positive future for those children and young people who offend.

The legislative proposals aim to be flexible and enabling enough to support new operating initiatives while establishing clear parameters for the most important matters that belong in legislation. Further work is required to develop and design the operational model in line with these enabling legislative proposals. This will include developing detailed costings of the wider changes and identifying impacts on the workforce. The key constraints around the analysis presented in this paper are:

- The analysis has been undertaken ahead of detailed design work. This raises the risk that legislative changes will restrict design options. The key stakeholders have been consulted on the proposals. Contemporary best practice knowledge which will also inform service design options.
- Agency consultation has been undertaken on the impacts on Government agencies as part of the development of this RIS, but within limited timeframes.

- A general indication only of the relative scope and magnitude of the options' operational implications has been provided, as this will depend on further detailed design work being undertaken as part of the business case for the new operating model.
- The cost implications of options have not been analysed as they enable, rather than prescribe, operational changes and these will depend on future design proposals.

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Executive summary

- 1 The proposals discussed in this RIS form part of the reform programme proposed by the Government in response to the Modernising CYF Expert Panel's Final Report (the Final Report). A key element of the reforms concerns children and young people who are alleged to have offended, have been proven to have offended or may offend in the future.
- 2 The Children, Young Persons, and Their Families Act 1989 (the CYPF Act) establishes the legislative framework for delivery of Youth Justice services. The framework was amended in 2010 to support improvements in operational work with more serious offenders, but otherwise has remained intact for nearly 30 years.
- 3 There is evidence indicating that the legislative framework for Youth Justice service responses are working. For example, court statistics for 10-16 year olds in the year ending December 2015 show that the number of children and young people dealt with in the Youth Court was the lowest in over 20 years and that this was the case for all major age cohorts and ethnic groups.
- 4 However, there are areas where more can be done to turn the lives of children and young people who offend around so that they can lead satisfying and crime free lives. Rangatahi courts have been established in some areas, but significantly more focus needs to be given to addressing cultural disparities in the system. More also needs to be done to achieve improved long-term outcomes for those involved in the Youth Justice system.
- 5 Knowledge about what works in Youth Justice has been substantially developed since the inception of the CYPF Act in 1989 and there is opportunity to reflect this in both the legislative framework and operational design proposals.
- 6 SOC invited the Minister for Social Development to report back on possible legislative change in Youth Justice concerning more focus on children's rights, prevention activity (including prevention of youth offending), restorative justice and use of community-based remand [SOC-16-MIN-0024 refers].
- 7 Based on the March 2016 SOC decisions, the reform proposals considered in this paper address the following:
 - prevention of offending by children and young people and early intervention once offending occurs
 - supporting a child-centred approach with the enhancement of the rights of children and young people in the Youth Justice system
 - supporting restorative justice opportunities for victims and young people
 - supporting community-based options as an alternative to detention in custody
 - supporting a positive future for those children and young people who offend.
- 8 It is considered that the proposals will provide a strong and enduring framework to support operational changes that will:
 - address the causes and drivers of offending so that risk of offending and re-offending is addressed at the earliest opportunity
 - support children and young people to transition effectively from the Youth Justice system and lead crime-free lives consistent with a social investment focus

- reduce cultural disparities in the system and support high aspirations for Māori and other ethnic groups.

Policy context

Embedding and enacting a child-centred approach

- 9 Government has determined that a far-reaching reform of the care and protection and Youth Justice systems is required to achieve better outcomes for vulnerable children through a strong child-centred approach.
- 10 The changes proposed represent a fundamental shift, driving the most significant and comprehensive changes since the CYPF Act was passed.
- 11 Nearly thirty years ago, the CYPF Act sought to reset the approach to youth offending from a model oriented around welfare to a more justice-aligned approach. As occurred in the care and protection area, the Youth Justice provisions of the CYPF Act provided for much more involvement of communities and families in decision-making about offending than previously.
- 12 The Youth Justice family group conference (FGC) model introduced by the CYPF Act has been recognised internationally. Youth offending rates have also been declining over recent years with the number of children and young people charged in Court at the lowest number in over 20 years (as measured for the year ended December 2015). However, the intended outcomes of the CYPF Act have not been fully realised.
- 13 As in the care and protection system, there are a proportion of young people with a high level of need who are cycling through the system as a result of repeat offending.¹ This group often have repeat FGCs and spend long periods on custodial remand. Long-term outcomes for this group of children and young people are generally poor and have considerable individual, societal and fiscal costs.
- 14 Following the release of the Final Report, the Government has endorsed that changes be made to make the Youth Justice system more oriented towards preventing offending and re-offending, to better protect children and young people's rights, and to support young people's participation in, and transition from, the system as part of achieving a more child-centred investment approach in the care and protection and Youth Justice systems.

Signalling and driving system reform

- 15 Reform to the CYPF Act provides an opportunity to send a clear message and change the behaviour of actors within the Youth Justice system, to practitioners, organisations, departments and the public.
- 16 In addition, legislative reform offers an opportunity to clearly articulate that change is occurring to support children and young people who come into contact with the system to better understand their rights, have a voice in decisions, and to reset the expectations of the Youth Justice service.
- 17 The current proposed legislative reforms are taking place contemporaneously with the development of the detailed operating model that sits under the Act. With this in mind, legislative options seek to direct behavioural change and enable operational

¹ The Christchurch Health and Development Longitudinal Study noted that a third of later violent offending were caused by the top five percent of children and young people with behavioural issues. Reference: Ferguson et al. (2005) *Show me the child at seven: the consequences, of conduct problems in childhood for psychosocial functioning in adulthood*. Journal of Child Psychology and Psychiatry 46:8 (2005), pp 837–849.

development, rather than tightly prescribe practice. Non-legislative options have been considered and are proposed where this best achieves Government's policy intent.

- 18 There are two parts to the reform programme:
- Stage One is the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill No 1). Bill No 1 makes better provision for children's and young persons' participation and views in processes and proceedings under the CYPF Act and enables a wider range of professionals to perform functions under the CYPF Act.
 - Stage Two consists of a more complex and wide-ranging set of legislative reforms to give effect to the proposed new operating model, as part of a second bill amending the CYPF Act (Bill No 2).
- 19 This RIS is part of the second stage of reforms and focuses on the Youth Justice service elements of the new operating model.
- 20 Options for the proposals in this RIS involving legislative reform have been identified as preferred on the basis the:
- option best supports the policy intent
 - option provides the strongest signal and greatest support to achieve the intent
 - option provides sufficient flexibility and durability to support the finer detail of the operational model and future developments.

Youth Justice

- 21 On 30 March 2016, SOC [SOC-16-MIN-0023] agreed to changes to the Youth Justice system that:
- a core service area of the new operating model will be Youth Justice which comprises preventing children and young people offending and re-offending, holding young people to account for their offending behaviour, and providing a restorative justice opportunity for victims, where appropriate
 - through the reform process there are also opportunities to simplify, clarify and better integrate provisions already within the CYPF Act and to improve alignment with related legislation.
- 22 SOC directed a report-back on further changes required to implement the new operating model, for inclusion in a second Bill. These include:
- changes necessary to enable the new system to respond to offending without requiring the young person to have formally entered the Youth Justice system
 - supporting new community-based options as an alternative to remand in custody [SOC-16-MIN-0024 refers]
 - provisions to further embed the voice of children at an individual and systemic level, and to update current provisions to provide a better focus on children's rights (note the *Child-Centred System RIS* addresses this area more completely than this RIS) [SOC-16-MIN-0024 refers]
 - creating clear accountability within the new operating system for prevention of youth offending, and strengthening responsibilities and accountabilities for other

agencies and Crown entities to ensure availability of effective universal and enhanced services for vulnerable children and families (note: the *Accountabilities RIS* addresses this area more completely than this RIS)

- establishing a single point of accountability for assessing the needs of vulnerable children, young people and families, including those who have significant unmet needs but do not yet require a care and protection or Youth Justice response (note: this will be addressed in the *Accountabilities RIS*).

23 The reform proposals considered in this RIS have been grouped together under the following headings:

- Prevention of offending and early intervention of offending by children and young people.
- Supporting a child-centred approach with the enhancement of the rights of young people in the Youth Justice system.
- Providing restorative justice opportunities for victims and young people.
- Supporting community-based options as an alternative to remand in custody.
- Supporting a positive future for those children and young people who offend.

24 Regulatory and non-regulatory options have been considered to achieve proposals. Although non-regulatory mechanisms could be used with some of the proposals, legislative reform has been identified as the preferred way for progressing because it has a number of benefits:

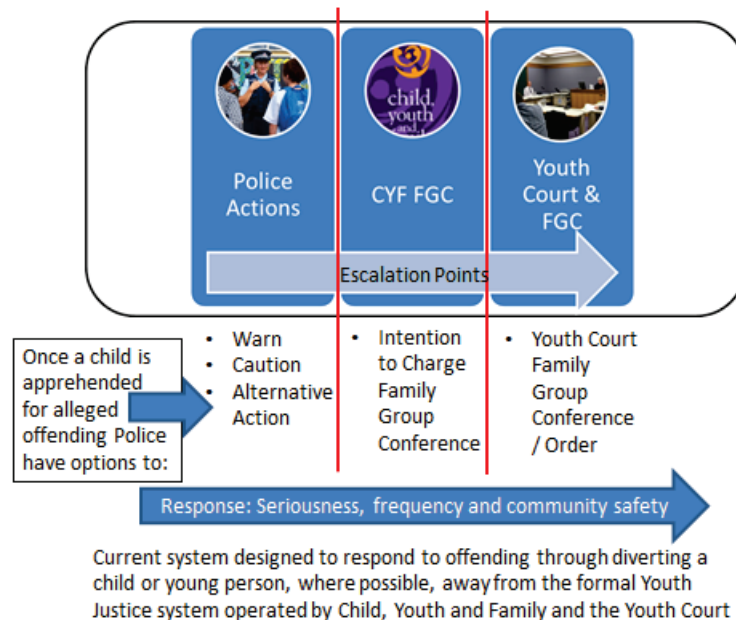
- it will send a clear signal about the need for change and government's expectations
- it helps create a common direction for the different agencies and people involved in administering the Youth Justice system
- it reduces uncertainty and ambiguity
- it establishes clear parameters for young people's rights and restrictions on liberty.

25 It is intended that SOC considers the proposals on 14 September 2016. The options identified in this paper have been developed and assessed against these timing parameters.

Status quo and problem definition

1. Prevention of offending and early intervention of offending by children and young people

- 26 The diagram below illustrates the current legislative design of the Youth Justice system which responds to alleged offending by children and young people.



- 27 Key decision-making points in the Youth Justice system include:

- when Police apprehend a child or young person suspected of offending. Most are diverted away from the formal Youth Justice system at this stage
- during the consultation between Police and a Youth Justice Co-ordinator (held where a child or young person has not been arrested and Police believe criminal proceedings are required in the public interest)
- at the Intention to Charge (ITC) Family Group Conference (held when diversion is not considered to be the appropriate response and the child or young person has not been arrested). These FGCs determine whether prosecution can be avoided and what the most appropriate course of action is to avoid offending in the future
- at the other types of FGC that occur at various points in the Youth Justice system
- when CYF gives effect to the recommendations of FGCs (section 268 of the CYFF Act)
- at Youth Court.

- 28 Police apprehended 8,715 children and young people in 2015 for alleged offending. Administrative data shows that approximately 20 percent were dealt with in the Youth Court, 15 percent through CYF (Intention to Charge FGCs) and 70 percent received Police-led 'alternative actions,' cautions and/or warnings.²

² Note that children and young people can be dealt through multiple actions for an alleged single offence or offended multiple times.

- 29 Data also shows that Māori children and young people are more likely to remain involved in the Youth Justice system.³

Percentage with Māori involved (%)	Youth Justice Response
49	Alternative Action
51	Intention to Charge FGC
54	Youth Court FGC
64	Supervision with Activity Orders
63	Supervision with Residence Orders

The current care and protection system does not mandate prevention and early intervention to address risk of offending and re-offending

- 30 The Youth Justice system exists in parallel to the care and protection system with some overlap where a child or youth offender has care and protection needs. At present, offending behaviour can be addressed as a care and protection concern on the ground in section 14(1)(d) of the CYPF Act: the child or young person has behaved, or is behaving, in a manner that is or is likely to be harmful to the physical or mental or emotional wellbeing of the child or young person or to others; and the child's or young person's parent or guardians, or the persons having the care of the child or young person, are unable or unwilling to control.
- 31 However, the existing system does not explicitly mandate CYF to work with and support children and their families where that child or young person is identified at risk of offending.
- 32 There is strong evidence identifying childhood risk factors for youth and adult offending patterns, and there are many points at which earlier identification and intervention could be effective. These include early childhood education, schools, apprehensions of child offenders by the Police and, importantly, care and protection involvement.
- 33 Almost 60 percent of young people referred to CYF by the Police for youth offending behaviours have previously been notified to CYF as a result of care and protection concerns. The high rates of offending by young people with a history of maltreatment suggest there is insufficient investment in preventing and addressing the consequences of maltreatment in children and young people. Age of first offence is one of the strongest indicators of future life-long offending behaviour and associated poor life outcomes.
- 34 Children with conduct problems are a high-risk group for future youth offending. Early intervention services for this group are also more likely to be successful and are less expensive than services that target older youth or adults with more entrenched behaviours. Research has suggested that children with conduct problems have particular developmental characteristics from childhood that when left untreated are likely to continue into adulthood. It is these particular "life-course persistent" children with conduct problems that are found to be responsible for a disproportionate level of anti-social behaviour and offending. It is estimated the

³ Ministry of Social Development analysis of offending patterns.

present value of saving a 14-year old high risk young person from a life of crime ranges from US \$2.6 to \$5.3 million (NZ \$3 to 6.2 million).⁴

There are opportunities to strengthen the extent to which the system prevents offending by children and young people

- 35 Evidence supports the need to increase the focus on preventing offending and early intervention to address risk of offending and re-offending.
- 36 The *Intensive Intervention Service RIS* considers the legislative mechanisms to set up the proposed Intensive Intervention responses to support both those children and young people at risk of offending and those who have offended to get early and appropriate supports.
- 37 The *Foundations for a Child-Centred System RIS* considers legislative proposals to amend the general principles in section 5 of the CYPF Act to include two principles that specifically support children or young people at risk of offending. These are to:
 - prevent and respond to children and young people who are suffering or at risk of harm (including to their wellbeing and development), ill-treatment, abuse, neglect, deprivation, and being at risk of offending
 - respond to children and young people who offend in a way that reduces future offending, responds to the rights and interests of the victims of offending, promotes the rights and best interests of children and young people who offend, holds children and young people accountable for their offending and encourages them to accept responsibility for their behaviour.

2. Supporting a child-centred approach with the enhancement of the rights of young people in the Youth Justice system

- 38 The Expert Panel and Cabinet have agreed that the new operating model must take a child-centred approach. The *Foundations for a Child-Centred System RIS* contains proposals to embed a child-centred approach more firmly into the new operating model and give fuller effect to children's rights. These principles will be outlined in section 5 of the CYPF Act.

Youth connection and advocacy service

- 39 A youth connection and advocacy service is to be established as part of the reforms being progressed in the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill. The purpose of the new youth connection and advocacy service is to provide individual and collective advocacy and leadership and skill development for children and young people who are or have been in care. The youth connection and advocacy service will not provide legal advocacy.
- 40 Children and young people will need to meet eligibility criteria to access the service. The only group of children and young people in the Youth Justice system who will be able to access the new youth advocacy service will be those who have Youth Justice and/or care custodial status.
- 41 The new advocacy service will work collaboratively with the child or young person and those working with the child to support the child to participate in decisions and processes relating to them. The advocate will not provide legal advice but will be able

⁴ Cohen MA & Piquero AR. *New Evidence on the Monetary Value of Saving a High Risk Youth*. J Quant Criminol (2009) 25:25–49.

to support the child or young person to interact with and instruct their lawyer. The proposal (below) to increase legal advice through Youth Advocates pre-Youth Court will complement, not duplicate, the new advocacy service.

- 42 Within the current statutory Youth Justice system, there are legal services that advocate for, and support, the interests of children and young people. They include health and disability advocates whose functions are specified in the Health and Disability Commissioner Act 1994, lay advocates appointed under the CYPF Act, and provision for children and young people to access legal advice when being questioned by Police about an offence.

Legal representation is not available at ITC FGCs for serious offences

- 43 Approximately 71 percent of charges against children and young people are addressed informally, before Youth Court proceedings. However, State-funded legal representation is currently not available to young people who are involved in a Youth Justice intervention that is not at the Youth Court other than when a child or young person is being questioned by Police.⁵ One of the Youth Justice interventions pre-Youth Court is the 'Intention to Charge' (ITC) FGC. Approximately 2,500 ITC FGCs and 250 FGCs for children who offend were held in 2014/15.
- 44 The purpose of an ITC FGC is to decide whether criminal proceedings should be instituted against a young person by the laying of a charge in Court. A young person is expected to admit or deny allegations they have committed an offence at the FGC but without legal support, many young people struggle to have a voice and participate in the FGC, to understand their rights and obligations and the implications of decisions.
- 45 These difficulties are compounded when a young person may not have the communication skills or be sufficiently assertive to indicate that they did not commit an offence, especially in the presence of Police.
- 46 In this context, without the support of appropriately trained legal representation, there is the risk with ITC FGCs that a child or young person may admit to an offence they did not commit or to which they have a substantive defence, or may be incorrectly charged.
- 47 This can have adverse longer term consequences. What happens at an ITC FGC will determine whether a young person becomes subject to the jurisdiction of the Youth Court and the more young people become involved in the formal system, the higher the risk of further offending.

3. Restorative justice opportunities for victims and young people

- 48 Restorative justice is a system of criminal justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large. This contrasts to more punitive approaches where the main aim is to punish the offender. The Final Report noted that restorative justice processes enable healing and restoration for victims and young people.⁶
- 49 Restorative approaches are regarded as effective and appropriate for young offenders because they encourage the taking of responsibility for wrongdoing and

⁵ There is entitlement to consult with a barrister or solicitor for children and young people who are being questioned by Police in relation to the commission or possible commission of an offence or who are arrested (sections 227 and 228 of the CYPF Act). Police are required to inform children and young people of this right before questioning (sections 215 to 218 of the CYPF)

⁶ Expert Panel Final Report, p 73; see also. http://www.iirp.edu/pdf/RJ_full_report.pdf

provide a chance for a young person to learn about the impact of actions and make things right. The traditional penal approach forces the young offender to experience various types of deprivations, but these experiences rarely make a young person aware of the loss and hurt experienced by victims, including material loss, mental loss, emotional loss, and spiritual loss.⁷

- 50 Although the CYPF Act does not use the term “restorative justice,” it incorporates provisions relating to the attendance and participation of victims that support restorative justice practice. Section 208(g) contains the principle that:

(i) in the determination of measures for dealing with offending by children or young persons, consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victim to participate in the process under this Part for dealing with the offending); and

(ii) any measures should have proper regard for the interest of any victims of the offending and the impact of the offending on them.

The CYPF Act does not sufficiently support restorative justice outcomes

- 51 The CYPF Act was recently amended to better take into account the role of, and views of, victims at FGCs.⁸ However, this amendment did not explore increasing restorative outcomes for victims.
- 52 Consequently, the existing legislation does not identify the need to attain restorative justice outcomes as a function of a FGC. This allows for other, more punitive retributive concerns, to drive FGC outcomes without sufficient regard being had to how a young person can make sufficient reparation to a victim and in a way that facilitates their moral and ethical learning and development.
- 53 Research shows that achieving restorative outcomes is important for victims. Victims report greater satisfaction with FGCs when a restorative outcome is achieved with an increased sense of safety.⁹
- 54 To date, practice approaches have been used within CYF to foster a focus on restorative justice outcomes in FGCs. This has been with variable success and has depended largely on the willingness of individual practitioners to adopt this practice.

⁷ <https://www.restorativejustice.org.uk/news/more-evidence-effectiveness-restorative-justice-young-offenders>

⁸ See amendments to section 251(1A) and (2)(a) of the CYPF Act; the victim also has the right to receive information about the outcomes of the FGC (s265(1)(f)).

⁹ Barretto, Miers & Lambie (2016) The Views of the Public on Youth Offenders and the New Zealand Criminal Justice System. *Int J Offender Ther Comp Criminol* May 4.

4. Supporting community-based options as an alternative to detention in custody

The current system has mechanisms to allow for community-based options as an alternative to detention in custody (remand)

- 55 When a Youth Court case is adjourned from one date to another, the child or young person is “remanded.”¹⁰ Section 238(1) of the CYPF Act sets out the options available to the Youth Court. The child or young person can be:
- (a) released
 - (b) released on bail
 - (c) delivered into the custody of parents or guardians or usual caregivers or someone approved by a social worker
 - (d) detained in the custody of the Chief Executive of CYF, an iwi social service or a cultural social service.
 - (e) detained in Police custody (with the exception that a who child cannot be detained in Police custody).
- 56 The principles in the CYPF Act, which apply to decision-making in the Youth Justice system, include the principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public. This principle also applies to children and young people who are alleged to have committed offences, but are awaiting a hearing, ie on “remand”.
- 57 Article 37(b) of the United Nations Convention on the Rights of the Child (UNCROC) provides that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” (emphasis added).

Detention in custody

- 58 While awaiting a trial date, the Youth Court can currently order the detention of a child or young person into the custody of CYF¹¹. This usually involves a Youth Justice residence run by CYF¹² or a cell at a Police station¹³. Currently the Court has the power to review, from time to time, any detention of a child or young person awaiting trial (remand).¹⁴
- 59 The main secure custodial placement on ‘remand’ is in a Youth Justice residence (with a total of 130 beds) operated by CYF.¹⁵ Seventy three percent of these beds

¹⁰ While the term “remand” is often used by practitioners, the relevant section of the CYPF Act (section 238) does not refer to remand, but detention.

¹¹ This is only done if he or she is likely to abscond, likely to commit further offences or is necessary to prevent the loss of destruction of evidence or interference with witnesses.

¹² Under section 238(1)d of the CYPF Act.

¹³ Under section 238(1)e of the CYPF Act.

¹⁴ Section 241 of the CYPF Act.

¹⁵ Korowai Manaaki in South Auckland can have up to 40 young people.

Te Maioha o Parekarangi in Rotorua can have up to 30 young people.

Te Au rere a te Tonga in Palmerston North, which is a male only residence, can have up to 30 young people.

are filled with children and young people in custody pending further Youth Court appearance. The remaining beds are filled by children and young people on Supervision with Residence orders or serving a sentence of imprisonment in the residence. **[Section 9(2)(f)(iv) OIA]**

There is a problem with the length of time of custodial remands

- 60 The length of time children and young people are remanded in Youth Justice residences in New Zealand is 46 days, and is 30 percent longer than in comparable jurisdictions, such as Australia. Half of New Zealand young people in custodial remand stay for more than a month compared with 36 percent in Queensland and 20 percent in Canada.
- 61 Approximately 560 children and young people are remanded each year in Youth Justice residences. Only 27 percent of these children and young people go on to get Supervision with Residence order from the Youth Court indicating that, approximately 300 would be suitable for placement in an alternative community based option.
- 62 Possible community-based alternatives include supported bail, one-on-one specialist carers and placement in smaller community-based settings with specially trained and well-supported workers. These alternatives maintain young people's connections to their communities, address developmental needs and have proper regard to the need for public safety.¹⁶
- 63 Evidence shows that the use of custodial detention can cause trauma to young offenders and increase the risk of further offending.¹⁷ The factors contributing to the problem are complex and include a lack of community-based detention options. This issue will be addressed in the future operating model.

Supporting a positive future for those children and young people who offend

- 64 As well as having high rates of re-offending, young offenders also go on to experience adverse outcomes in other areas. For the 1990/91 birth cohort, young offenders had very high rates of educational underachievement, benefit receipt, early parenting, and involvement with CYF as parents. In addition, this cohort had higher rates of mortality in late adolescence and early adulthood compared to the rest of the population.¹⁸
- 65 Currently, CYF work with approximately 3,000 children and young people (aged 10-16 years) in the provision of Youth Justice FGC plans and high end Youth Court orders (such as Supervision, Supervision with Activity or Supervision with Residence orders).

The current legislative framework does not adequately support a focus on transitioning from Youth Justice

- 66 At present, there are no obligations in the CYPF Act to support the transition of young people beyond the completion of a FGC plan or Youth Court order. However, transition from the Youth Justice system can be challenging for a young person when

Te Puna Wai ō Tuhinapo in Christchurch can have up to 30 young people.

¹⁶ Expert Panel Final Report, p 99.

¹⁷ Lambie I. & Randell I. (2013). The impact of incarceration on juvenile offenders. *Clinical Psychology Review* (33), 448-449. Doi.org/10.1016/j.cpr.2013.01.007

¹⁸ Ministry of Social Development (2010) *Crossover between child protection and Youth Justice, and transition to the adult system*; July 2010.

trying to sustain the gains made from completing particular Youth Court orders or FGC plans.

- 67 For young people transitioning out of Youth Justice residences, there is also an operational disjoint between work done with the young person in the residence and support at a site level when the young person returns to their community. This has resulted in poor continuity of support. This was a key finding of the review of Military Style Activity Camps.¹⁹
- 68 In the future it is proposed that the Youth Justice system will work intensively with young people and their families to support transition out of the Youth Justice system. Transition planning will begin from the point of a young person's first contact with the Youth Justice system. Support for the young person's whānau, hapū and iwi to enable them to provide a positive environment to return to, where possible, will also be identified and planned for.²⁰
- 69 It is estimated that better transition supports could support a 15 percent reduction in future offending by 14-16 year olds. This would save an estimated \$60.1 -120.8 million in future justice costs.²¹
- 70 Much of the change will be at an operational level. The proposed new Intensive Intervention service will have an important role in supporting young people who have completed FGC plans or Youth Court orders.
- 71 Legislative proposals for the new transition service (covered by the *Transition to Independence RIS*) are relevant and will allow transition supports for eligible young people who leave a Youth Justice residential placement. However, these will not generally apply nor sufficiently signal the importance of all parties involved in Youth Justice working to support young offenders to transition successfully from the Youth Justice system to live crime free lives.

Objectives and Criteria

- 72 The following objectives have been identified for Youth Justice services:
- to help children and young people to take responsibility for their actions and live crime free lives
 - address the underlying causes of behaviours to prevent offending and re-offending
 - support approaches that protect the rights of the child and young person.
- 73 Consideration has also been given to the broader justice objectives including the goal of protecting public safety, supporting the needs of victims and maintaining trust in the justice system and to the following criteria:
- durability
 - fiscal and operational impact (including practicality to implement)
 - fairness and equity

¹⁹ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/evaluation/military-style-activity-camp/index.html>

²⁰ Expert Panel Report, p 26.

²¹ Based on Ministry of Justice cost benefit analysis modelling developed to support the raising of the age of the Youth Justice system.

- interaction with other legislative provisions and planned reforms
- consistency with the principles of the Treaty of Waitangi, UNCROC and other relevant international obligations
- compatibility with related Government objectives, including the investment approach.

74 The following table provides a more detailed breakdown of how proposals will be assessed against the objectives and additional criteria.

Objective	How proposals will be assessed against the objectives
Focus on addressing the underlying causes of behaviours to prevent offending and re-offending	The analysis will consider the extent to which proposals enable the new operating model to prevent offending and reduce re-offending within a child-centred approach. There are many drivers of offending, including structural factors. This RIS considers the impact on more individualised factors.
Approaches that protect the rights of the child and young person; and the balancing of rights of the child and young person with the interests of victims and public safety	The analysis will consider the extent to which proposals protect the rights of the child or young person within the Youth Justice system. This also recognises the need to balance the rights of victims, the public and the integrity of the justice system. The analysis will consider the extent to which the proposals enable the new operating model to be child-centred.
Additional criteria	How these additional criteria will be assessed
Durability	<p>The analysis will consider the extent to which proposals are likely to:</p> <ul style="list-style-type: none"> • support the long-term transformation required to implement the new operating model for vulnerable children and young people • minimise the risk of foreclosing options to be considered in future design work • minimise the possible risk of repeal and replacement due to future design work.
Fiscal and operational impact (this includes practicality, being the extent to which proposals are practical, clear and easy to understand)	<p>The analysis will consider the following impacts, and will favour proposals that achieve the objectives above while minimising the fiscal and operational impact:</p> <ul style="list-style-type: none"> • the compliance costs of implementing the proposal across government agencies, and for other organisations • the operational implications of implementing the proposals for government agencies, and any other affected organisations, including the scope and magnitude of organisational change required to implement proposals.
Fairness and equity	<p>The analysis will consider the extent to which proposals promote fairness and treat similar cohorts in a consistent way, including:</p> <ul style="list-style-type: none"> • the impact on, and outcomes, for Māori and reducing the disparity in outcomes • if the proposal only affects a part of the Youth Justice population.
Interaction with other legislative provisions and	The analysis will consider the extent to which proposals align with, and do not hinder, legislation or planned reforms

planned reforms	
Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations	The analysis will consider the extent to which proposals meet New Zealand’s international obligations. In the context of UNCROC, this includes considering what impact the option has on children in the context of their family and community (Child Impact Assessment).
Compatibility with other Government objectives (including compatibility with an investment approach)	<p>Where relevant, the analysis will consider the extent to which proposals are aligned with other objectives that Government is seeking to achieve. The analysis will favour proposals that support Government objectives beyond those specified above, and those that do not hinder the achievement of such objectives.</p> <p>Government objectives that will be considered in this context, where appropriate, include:</p> <ul style="list-style-type: none"> • existing government policy settings • Better Public Services targets • relevant strategy documents, eg the Children’s Action Plan and the Youth Crime Action Plan (YCAP) • the direction of key work programmes underway.

Table 1: Option and impact analysis for the prevention of offending by children and young people and early intervention once offending occurs

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>Option 1a</p> <p>Non-regulatory option</p>	<p><i>Description</i></p> <p>The CYPF Act does not give CYF a specific mandate to prevent offending. Harm and trauma for this cohort of children and young people can be addressed once the child enters the Youth Justice system or through a formal notification.</p> <p>Prevention provides the best opportunity for investing early in the lives of a child or young person and the most cost effective way of reducing further trauma.</p> <p>The status quo entails that:</p> <ul style="list-style-type: none"> • Police has the mandate to respond by either warning, caution or 'alternative action' when alleged offending comes to their attention before any escalation to CYF or the Youth Court • CYF has the mandate to respond to the needs of a child or young person once they have been referred due to alleged offending behaviour or notification under s15 of the CYPF Act. • the development of more policy guidance about the scope of section 14 of the CYPF Act to pick up on behavioural indicators of risk of offending such as conduct disorder. <p>No legislative change would be required.</p>	<ul style="list-style-type: none"> • Unlikely to have the impact needed to achieve more focus on prevention and early intervention. 	<p><i>Objectives: Addressing the underlying causes of behaviours to prevent offending and re-offending</i></p> <p>The existing system has helped reduce youth offending rates on the whole, with the exception of a cohort of children and young people with complex needs who would benefit from responses earlier in the life of the problem but the proposal will not be effective in picking up behaviours early, before offending occurs.</p> <ul style="list-style-type: none"> • <i>Durability: No issues identified</i> • <i>Fiscal and operational impact: None.</i> The current system is not designed to actively support an investment approach • <i>Interaction with other legislative provisions and planned reforms: None identified.</i> • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations: Yes</i> • <i>Compatibility with other government objectives: Broader work is already underway as part of the Youth Crime Action Plan to improve FGCs and prevent child and youth offending through operational means.</i> 	<ul style="list-style-type: none"> • A cohort of children and young people, who could have been supported with effective prevention programmes, is likely to be escalated into the formal Youth Justice system. • Approximately 1,600 are picked up by Police through 'Incidence Interventions' each year (which includes people who have not offended, but present with at-risk behaviours). • <i>Fairness and equity:</i> operational changes to the current system have supported significant reductions to youth offending rates. However, the proportion of Māori entering the system is increasing. Prevention and effective early intervention is critical to reducing the proportion of Māori entering the Police part of the system and being escalated through the CYF/ Youth Court part of the Youth Justice system.
<p>Option 1b</p> <p>Amend the principles to include principles that address prevention and early intervention</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p>This option is considered in the <i>Foundations for a Child-centred system RIS</i></p>			

Table 2: Option and impact analysis for supporting a child-centred approach with the enhancement of the rights of young people in the Youth Justice system

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>Option 2a</p> <p>Non-regulatory option</p>	<p><i>Description</i> The status quo provides services that advocate for, and support, the interests of children and young people. However, State-funded legal representation is generally limited to when a child or young person enters the court system.</p> <p>Efforts could be made to promote improved access to legal advice via the Police Detention Legal Assistance (PDLA) service, administered and financed through the Ministry of Justice.</p> <p>Practice improvements could include further training of front-line practitioners (including lawyers).</p> <p>No legislative change would be required.</p>	<ul style="list-style-type: none"> As there are no changes to the system there are few significant implications or impacts and there would continue to be a large group of children and young people who have contact with the Youth Justice system but do not have legal representation. 	<p><i>Approaches that protect the rights of the child and young person</i> The existing system has provision to make children and young people aware of their right to have legal representation. There is also provision for State-funded legal representation if the matter goes to court.</p> <ul style="list-style-type: none"> <i>Fiscal and operational impact:</i> No changes envisaged. Some advocacy functions can be undertaken by the new Youth Advocacy Service. <i>Interaction with other legislative provisions and planned reforms:</i> No implications identified. <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> no new implications identified. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> There are situations pre-Court where the availability of State-funded legal representation could reduce the escalation of children and young people in the Youth Justice system, and so reduce the associated impacts on the rights of a child.</p> <p><i>Approaches that protect the rights of the child and young person</i></p> <ul style="list-style-type: none"> The cost of accessing legal services means that many children and young people are unable to afford to appoint their own legal representative. There are situations pre-Court where the availability of State-funded legal representation could reduce the escalation of children and young people in the Youth Justice system, and so reduce the associated impacts on the rights of a child. <i>Durability:</i> No issues identified. <i>Fairness and equity:</i> No effect.
<p>Option 2b</p> <p>Require <u>mandatory</u> State-funded legal representation for children and young people within 24 hours of arrest or at interview</p> <p>Regulatory option</p>	<p><i>Description</i> This option would increase the legal protections available to children and young people by requiring that a State-funded legal representative be appointed within 24 hours of arrest by Police or at interview.</p> <p><i>Legislative change</i> Legislative change would be needed to the CYPF Act to require State-funded legal representation for the child or young person within 24 hours of arrest by Police or at interview.</p>	<ul style="list-style-type: none"> [Section 9(2)(g)(i) OIA] If an arrest is made, it does not necessarily mean that the offender will be taken to the Police station. In many instances, the child or young person may be returned home, if there is no reason to retain them in custody. Not all young people receive formal interviews at a Police Station. Sometimes this is done as part of the community incidence response and a decision is made at the point of incidence. Any increase in use of Youth Advocates at arrest will have significant cost implications and create capacity issues to meet demand. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and reoffending</i> For a child or young person to be made accountable for their actions, they need to understand the nature of the charges and implications of responses. Having independent legal advice will assist in this process. This will assist that the appropriate justice response is agreed to prevent re-offending.</p> <p><i>Approaches that protect the rights of the child and young person</i> A lawyer's key role is to protect the rights of their clients. Increasing the legal protections of every child or young person who is arrested or interviewed contributes to ensuring the current Youth Justice system is more child-centred and provides opportunities to improve the voice of children and young people at the centre of the new operating model.</p> <ul style="list-style-type: none"> <i>Fairness and equity:</i> no direct impact identified. <i>Interaction with other legislative provisions and planned reforms:</i> None anticipated. <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option fully supports New Zealand's UNCROC obligations around Article 4 (social services) and Article 12 on the views of the child. <i>Compatibility with other Government objectives:</i> This option supports the Youth Crime Action Plan (YCAP) and Youth Crime Better Public Services (BPS) target. 	<ul style="list-style-type: none"> <i>Durability:</i> There is a risk that this option is not sufficiently flexible to support the new operating model. <i>Fiscal and operational impact: [Section 9(2)(g)(i) OIA]</i> This option has scale, cost and workforce implications and would require new funding [Section 9(2)(g)(i) OIA] Costs equate to estimated 3.3-5.5 hours legal services [Section 9(2)(f)(iv) OIA] for the estimated 3,400 eligible young people, noting 8,700 children and young people apprehended each year, 1,800 already go to Youth Court and already receive legal representation, and about 3,500 are dealt through warnings). There could be some cost savings if children and young people are not escalated up to FGCs and Youth Court.^{22,23} If there are not enough Youth Advocates available to take on this additional work, there could be delays to convene alternative actions, FGCs and Youth Court. Consideration of where the funding would come from would still need to be agreed between agencies. Any changes will have implications for how this system could be administered by the new Ministry. The administration costs are still to be assessed Expansion of a mandatory legal representation service will have implications for the Ministry of Justice who manage the existing Youth Advocate workforce.

²² New Zealand research by US Ian Axford Scholar Ziyad Hopkins in 2015 documented incidences where early involvement of legal representation reduced escalation of that young person in the Youth Justice system.

²³ The average estimated cost of a Youth Court FGC case is just under \$30,000 (a third of these costs relate to secure custodial placements).

<p>Option 2c</p> <p>Require <u>mandatory</u> State-funded legal representation at child offender FGCs and intention to charge FGCs</p> <p>Regulatory option</p>	<p><i>Description</i></p> <p>This option would increase the legal protections available to children and young people by requiring that a State-funded legal representative be appointed at child offender FGCs and ITC FGCs.</p> <p><i>Legislative change</i></p> <p>Legislative change would be needed to the CYPF Act to require mandatory State-funded legal representation at child offender FGCs and ITC FGCs.</p>	<ul style="list-style-type: none"> This option has scale, cost and workforce implications. It is estimated that current workforce capacity would be sufficient to meet demand. In 2015, approximately 250 child offender FGCs were held and 2,500 ITC FGCs were held. This option would extend legal protections to an estimated 1,600 children and young people annually. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i></p> <p>For a FGC to function well, it requires a young person to admit the alleged offence. From this point, it allows a FGC to develop an appropriate plan to address the underlying causes of offending. Getting this right will be assisted by independent legal advice.</p> <p><i>Approaches that protect the rights of the child and young person</i></p> <p>This option strengthens the legal protections for the child or young person at key decision points in the Youth Justice process.</p> <ul style="list-style-type: none"> <i>Durability:</i> No issues identified. <i>Fairness and equity:</i> Given Māori are more likely to be escalated into the formal Youth Justice system, getting legal advice early is likely to assist in reducing the escalation of Māori to Youth Court. <i>Interaction with other legislative provisions and planned reforms:</i> This work supports the Youth Crime Action Plan. <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option strengthens (but not fully supports) New Zealand's UNCROC commitments. <i>Compatibility with other government objectives:</i> This option supports the YCAP and Youth Crime BPS target. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact:</i> For this option, it is estimated that it would cost \$[Section 9(2)(f)(iv) OIA] million per annum for an estimated 1,600 eligible children and young people.²⁴ Costs equate to an estimated 3.3 -4.5 hours legal services (Youth Advocates can charge [Section 9(2)(f)(iv) OIA] for 6 hours block at Youth Court) for the 1,600 eligible young people (this recognises that 40 percent already get escalated to the Youth Court and access legal representation already). The administration of this system would be done by the new Ministry. Expansion of a mandatory legal representation service will require the new Ministry to work with the Ministry of Justice who manage the existing Youth Advocate workforce. The existing Youth Advocate workforce would be sufficient to support the estimated number of children and young people in this option.
<p>Option 2d</p> <p>Require <u>mandatory</u> State-funded legal representation at intention to charge FGCs for offences carrying a penalty of 10 years or more imprisonment.</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i></p> <p>This option would enable a State-funded legal representative to be appointed at ITC FGCs where a young person is charged with an offence carrying a penalty of 10 years or more imprisonment.</p> <p><i>Legislative change</i></p> <p>Legislative change would be required to empower the Minister responsible for administering the CYPF Act to recommend the making of regulations governing the eligibility, appointment and payment of State-funded legal representatives for young people who are alleged to have committed an offence carrying a penalty of 10 years imprisonment or more at ITC FGCs.</p>	<ul style="list-style-type: none"> This option would extend legal protections to about one-third of young people with the most serious charges who attend ITC FGCs. This would involve approximately 500 young people attending ITC FGCs. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending:</i> For a FGC to function well, it requires a young person to admit the alleged offence. From this point, it allows a FGC to develop an appropriate plan to address the underlying causes of offending. Getting this right will be assisted by independent legal advice.</p> <p><i>Approaches that protect the rights of the child and young person:</i> This option strengthens the legal protections for the young person <u>most</u> likely to face escalation through to the Youth Court.</p> <ul style="list-style-type: none"> <i>Durability:</i> No issues identified. <i>Fairness and equity:</i> Will achieve a fairer and more equitable system. <i>Interaction with other legislative provisions and planned reforms:</i> This work supports the Youth Crime Action Plan <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option strengthens (but not fully supports) New Zealand's UNCROC commitments <i>Compatibility with other government objectives:</i> This option supports the YCAP and Youth Crime BPS target. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact:</i> For this option, it is estimated that it would cost \$[Section 9(2)(f)(iv) OIA]per annum. Costs equates to estimated 3.3 -4.5 hours legal services (Youth Advocates can charge [Section 9(2)(f)(iv) OIA] for 6 hours block at Youth Court) for the 500 eligible young people (this recognises that 40 percent already get escalated to the Youth Court and access legal representation already and only a third of current charges would be deemed in the "serious category") . It is anticipated that current capacity of the Youth Advocate workforce would be sufficient to support the estimated number of young people. Any changes will have implications for how this system could be administered by the new Ministry. Expansion of a mandatory legal representation service will require the new Ministry to work with the Ministry of Justice who manage the existing Youth Advocate workforce.

²⁴ The \$850,000 – \$1.4 million estimate is based on the adjusted length of time for ITC FGCs and actual demand. This estimate assumes future economic conditions and policy settings are similar to current settings. The assumption is that 60 percent of ITC FGCs would warrant a youth advocate as nearly 40 percent are already provided with a Youth Advocate due to escalation to the Youth Court.

Table 3: Option and impact analysis for supporting restorative justice opportunities for victims and young people

Option	Features	Implications and impacts	Benefits	Issues/Risks
Option 3a Non-regulatory option	<p><i>Description</i> This option entails that:</p> <ul style="list-style-type: none"> consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victim to participate in the process for dealing with the offending); and any measures should have proper regard for the interest of any victims of the offending and the impact of the offending on them. <p>Changes would be achieved through further training of staff involved in Youth Justice FGCs.</p> <p>No legislative change required.</p>	<ul style="list-style-type: none"> No change to the status quo would mean no fiscal impacts. Analysis identified that the current system places too much confidence in the assumption that simply bringing together the victim, the young person and their family will produce a restorative outcome. The ongoing work to improve the quality of the victim experience could be met within baselines. 	<ul style="list-style-type: none"> <i>Durability:</i> No implications identified. <i>Fiscal and operational impact:</i> Change would be achieved through training and resource costs which would be met through baseline funding. <i>Fairness and equity:</i> No implications identified. <i>Interaction with other legislative provisions and planned reforms:</i> No implications identified. <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> No implications identified, <i>Compatibility with other government objectives:</i> The current approach of driving operational changes to FGCs through non-regulatory means is a focus of the YCAP. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending.</i> Effective Restorative Justice practices can play a key role to reducing re-offending rates by as much as 66 percent. It is also a form of justice that has been built out of Māori cultural practices.²⁵ Analysis suggests that the current system is not effective enough. There is a risk that the current system places too much confidence in the assumption that simply bringing together the victim, the young person and their family will produce a restorative outcome.</p> <p><i>Approaches that protect the rights of the child and young person</i> Effective restorative justice practice requires the voice of both the victim and the child or young person to be heard to then develop a satisfactory response. Analysis suggests that the current system is not effective enough.</p>
Option 3b Amend the CYPF Act to require the functions of FGCs to include consideration of restorative justice outcomes Regulatory option PREFERRED OPTION	<p><i>Description</i> Effective restorative justice processes enable healing and restoration for victims and young people. This option would strengthen support for restorative justice outcomes by requiring FGCs to consider how they can reasonably and practicably achieve restorative justice outcomes.</p> <p><i>Legislative change</i> This option would require legislative change to the CYPF Act to amend the functions of FGCs in section 258 to require FGCs to consider how they can reasonably and practicably achieve restorative justice outcomes</p>	<ul style="list-style-type: none"> This option will support achieving restorative outcomes for victims. Victims report greater satisfaction with FGCs when a restorative outcome is achieved with an increase sense of safety. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> Effective Restorative Justice practices can play a key role to reduce reoffending rates by as much as 66 percent. It is also a form of justice that has been built out Māori cultural practices.</p> <p><i>Approaches that protect the rights of the child and young person</i> Improving restorative outcomes will support the voice of a child or young person in the new operating model, while also balancing the voice of victims.</p> <ul style="list-style-type: none"> <i>Durability:</i> The existing system recognises the rights of victims with the CYPF Act. This option reinforces the current legislation. <i>Fairness and equity:</i> No direct impact identified, although the restoring of mana is part of effective restorative interventions and will have particular benefit to Māori. <i>Interaction with other legislative provisions and planned reforms.</i> No implications identified. <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option does support Article 12 (views of the child), 39 (rehabilitation of child victims) and 40 (juvenile justice) of UNCROC and Treaty of Waitangi obligations. <i>Compatibility with other government objectives:</i> This option supports the YCAP and the BPS target to reduce youth offending. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact:</i> This option has practice implications, eg additional staff training would be required. However, the legislative proposals are sufficiently flexible that these implications could be considered and accommodated within broader service design work. Broader service design work has yet to consider the additional costs of supporting victims to have meaningful engagement in the FGC process.
Option 3c Amend section 258 of the CYPF Act to require that victims must attend FGCs Regulatory option	<p><i>Description</i> To increase the direct involvement of victims, this option would ensure victims attend FGCs by requiring their attendance (instead of their current discretionary right to attend)</p> <p><i>Legislative change</i> This option would require amendment to the CYPF Act to require victim attendance at FGCs to achieve restorative justice</p>	<ul style="list-style-type: none"> This option has practice implications, broader service design work has yet to consider the additional costs of supporting victims to have meaningful engagement in the FGC process. It is difficult to see how those victims who did not want to attend, could be made to attend. 	<ul style="list-style-type: none"> Not all victims wish to be involved at FGCs to enable full restorative processes to be undertaken, this option could potentially re-victimise victims who do not wish to be involved. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending.</i> There is a risk that requiring victims to attend will alienate those who do not wish to participate and will not promote effective restorative justice practices.</p> <p><i>Approaches that protect the rights of the child and young person</i> There is a risk that requiring victims to attend will alienate those who do not wish to participate and will not promote effective restorative justice practices.</p> <ul style="list-style-type: none"> <i>Durability:</i> This option could cause additional harm to

²⁵ In Wellington, New Zealand, Police and CYF used information gathered from FGCs to target certain gang activity and truancy problems. The net effect has been a two-thirds reduction in crime by youth offenders in Wellington City between 1996 and 2001. Schmid, D.J. (2002) Restorative Justice: A new paradigm for criminal justice policy VUWLR 34.

Option	Features	Implications and impacts	Benefits	Issues/Risks
				<p>victims through re-victimisation.</p> <ul style="list-style-type: none"> • <i>Fiscal and operational impact:</i> There is a risk that this option is not practicable or enforceable. • <i>Fairness and equity:</i> Potential harms generated through this option would not be considered “fair” to victims. • <i>Interaction with other legislative provisions and planned reforms:</i> This option is inconsistent with the <i>Victim Reform Amendment Act</i> • <i>Consistency with other government objectives:</i> This option is inconsistent with the rights of victims. • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option is unlikely to generate partnerships with Māori.

Table 4: Option and impact analysis for supporting community-based options as an alternative to remand in custody

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>Option 4a</p> <p>Non-regulatory option</p>	<p><i>Description</i> This option involves no legislative change but more practice focus and resources for use of community-based remand options. Resource allocation would prioritise community-based remand options for those high risk offenders that might otherwise be remanded to a Youth Justice residence (such as Supported Bail).</p> <p>No legislative change would be required.</p> <p>Any increase in use of community-based custodial remand alternatives would be achieved through practice guidelines.</p>	<ul style="list-style-type: none"> • More community-based remand placements would be available for high risk offenders that might otherwise be remanded to a Youth Justice residence. Therefore fewer of these offenders would be remanded to a Youth Justice residence. • If fewer offenders are remanded to a youth residence then the negative impacts of residential care on their future offending behaviour is reduced. • Of the 560 children and young people detained in Youth Justice residences each year, it is estimated that approximately 300 of them would be eligible for community-based placements. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and reoffending</i> The availability of more community-based placements may enable fewer offenders to be remanded to a Youth Justice residence because there will be more situations where there is a viable and appropriate alternative to remanding a young person in a Youth Justice residence.</p> <p><i>Approaches that protect the rights of the child and young person</i> Approaches that keep a child or young person in the community will ensure they remain connected to their family and whānau.</p> <ul style="list-style-type: none"> • <i>Fiscal and operational impacts:</i> Community-based alternatives are less costly than Youth Justice beds, savings could be expected once investment increasing the number of community-based alternatives was completed. • <i>Fairness and equity:</i> No implications identified. • <i>Interaction with other legislative provisions and planned reforms:</i> None identified. • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option is consistent with UNCROC, provided there is a reduction in the use of detention in Youth Justice residences. • <i>Compatibility with other government objectives:</i> This option contributes to Better Public Services (BPS) target 7 (reduce total crime) and BPS 8 (reduce re-offending) as the negative impacts of residential care on future offending behaviour is reduced. This option also contributes to the YCAP. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and reoffending</i> The availability of more community-based placements may not be sufficient to change decision-making on placements, the remand options in section 238 of the CYPF Act may continue to be used in the same way as now.</p> <p><i>Approaches that protect the rights of the child and young person</i> There is a risk that providing more community-based options designed to support high risk offenders safely in the community (such as supported bail and electronically monitored bail) will result in net-widening. For example, a young person who might have been granted bail may instead be subject to greater restrictions on supported bail.</p> <ul style="list-style-type: none"> • <i>Durability:</i> The status quo will not support the long-term transformation required to implement the new operating model. • <i>Fiscal and operational impact:</i> There would be costs and operational impacts associated with providing additional community-based alternatives. • [Sections 9(2)(f)(iv) and 9(2)(g)(i) OIA]
<p>Option 4b</p> <p>Amend the Youth Justice principles in section 208 of the CYPF Act to apply also to decisions about where children and young people should stay pending their court hearing</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i> The principles in the CYPF Act which apply to decision-making in the Youth Justice system include the principle in section 208(d) "that a child or young person who <i>commits an offence</i> should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public" (emphasis added).</p> <p>To ensure that decision-makers actively consider the range of community placement options available to them before electing secure custody, this option would amend the principles in section 208 to make it clear that children or young people <i>alleged to have committed offences</i> should also be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public.</p> <p><i>Legislative change</i> Legislative change would be required to the CYPF Act to amend section 208 to the effect that children or young people alleged to have committed offences should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public.</p>	<ul style="list-style-type: none"> • Being explicitly required to consider less restrictive alternatives means decision-makers might be expected to utilise community-based options more frequently and remand fewer young people to Youth Justice residences. • If fewer offenders are remanded to a Youth Justice residence, then the negative impacts of residential care on their future offending behaviour is reduced. • More community-based placements would be needed. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> As decision-makers in the Youth Justice system are required to use the principles in section 208 of the CYPF Act as guidance, a principle that explicitly references remand might be expected to influence decision-making in the preferred direction of fewer remand placements in Youth Justice residences, so lessening the number of children and young people who experience the negative effects of such residences.</p> <p><i>Approaches that protect the rights of the child and young person</i> Clear guidance for decision-makers to consider less restrictive remand placements protects the rights of children and young people.</p> <ul style="list-style-type: none"> • <i>Durability:</i> This option is sufficiently flexible to accommodate practice changes. • <i>Fiscal and operational impacts:</i> Community-based alternatives are less costly than Youth Justice beds, savings could be expected once investment increasing the number of community-based alternatives was completed. • <i>Fairness and equity:</i> No implications identified. • <i>Interaction with other legislative provisions and planned reforms:</i> None noted. • <i>Consistency with the Treaty of Waitangi, UNCROC and</i> 	<ul style="list-style-type: none"> • Anecdotal evidence suggests practitioners often read the current principle regarding custody placements on sentencing (section 208(d)) as if it applies to remand placements. Therefore the additional clarification set in the amended principle may not be enough in itself to move decision-making towards using community-based placements without other changes. • <i>Fiscal and operational impacts</i> – Additional community-based placements would be needed (see costings under option 4a).

Option	Features	Implications and impacts	Benefits	Issues/Risks
			<p><i>other relevant international obligation:</i> This option is consistent with UNCROC. This proposal should reduce the number and length of stay of Māori rangatahi in Youth Justice residences while 'remanded.'</p> <ul style="list-style-type: none"> • <i>Compatibility with other government objectives:</i> This option contributes to BPS 7 (reduce total crime) and BPS 8 (reduce re-offending) as the negative impacts of residential care on future offending behaviour is reduced. This option also contributes to the YCAP. 	
<p>Option 4c</p> <p>Amend section 241 of the CYPF Act to require <u>mandatory</u> Court review of secure placements every 14 days (Youth Justice residences) unless the court specifies another period of time</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i> To ensure that secure placements are actively reviewed by the Court, this option would require the Youth Court to review orders that detain a child or young person in the secure custody of the Chief Executive (Youth Justice residence) every 14 days (unless the Court specifies a different time), instead of the current discretionary power to review from time to time.</p> <p><i>Legislative change</i> Legislative change would be required to the CYPF Act. This option would amend section 241 of the CYPF Act to require the Youth Court to review orders detaining children and young people in the custody of the Chief Executive (in Youth Justice residences) every 14 days, unless the court specifies another period of time (shorter or longer)</p> <p>This would ensure that proposed amendment to the Youth Justice principles referenced in option 4b is adhered to.</p>	<ul style="list-style-type: none"> • Requiring frequent reviews of orders detaining children and young people in Youth Justice residences would enable decision-makers to make regular re-assessments as to whether remand to a Youth Justice residence remains the most appropriate option. • This option still gives flexibility to the Courts in cases where release is not realistic or when further information is required to determine remand placement. • Protocols or guidelines will be developed in consultation with the Ministry of Justice (Courts) and the Judiciary to help manage timeframes and expectations. • It is also anticipated that a mandatory review process will eventually reduce the number of reviews held. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> A mandatory review process every 14 days means children and young people should spend less time on remand in a Youth Justice residence. A shorter time on remand in a Youth Justice residence reduces the exposure the young person has to the negative effects of that residence.</p> <p><i>Approaches that protect the rights of the child and young person</i> Regular assessment of their circumstances while on remand in a residence protects the rights of children and young people. Being provided with a frequent opportunity to be considered for a community placement also protects the rights of these children and young people.</p> <ul style="list-style-type: none"> • <i>Durability:</i> This option is sufficiently flexible. • <i>Fairness and equity:</i> No implications identified. • <i>Interaction with other legislative provisions and planned reforms:</i> This option aligns with the proposed mandatory reviews of those detained in Police Cells (see option 4d). • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option is consistent with UNCROC and would reduce the length of stay of Māori in residences while 'remanded.' • <i>Compatibility with other government objectives:</i> This option contributes to the Better Public Service crime target, and contributes to the Youth Crime Action Plan. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impacts</i>[Section 9(2)(f)(iv) OIA] Some of these costs could be offset by children and young people spending less time in Youth Justice residence beds. These costs reflect of an eligible population 300 children and young people: <ul style="list-style-type: none"> • 200 will be short distance transfers [Section 9(2)(f)(iv)OIA] • 50 will be long distance transfers by car [Section 9(2)(f)(iv)OIA] • 25 will be short distance transfers by air [Section 9(2)(f)(iv)OIA] • 25 will be long distance transfers by air [Section 9(2)(f)(iv)OIA] • 30 percent reduction over in time in average length of stay by year 3 • 15 percent existing costs are already built into the new Ministry's budget • Assumes increases in use of video-conferences with 20 percent uptake year one, 30 percent year two and 50 percent year. • [Section 9(2)(f)(iv) OIA] • To mitigate the impact of mandatory reviews, work is also being undertaken on the possible option of enabling Youth Court Judges to consider the matter on papers. • More community-based placements would be needed.
<p>Option 4d</p> <p>Amend section 241 of the CYPF Act to require <u>mandatory</u> Court to review orders detaining young people in Police custody at least once every 24 hours</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i> To ensure that secure placements are actively reviewed by the Court, this option would require the Youth Court to review orders that detain a young person in Police custody, instead of the current discretionary power to review from time to time.</p> <p><i>Legislative change</i> Legislative change would be required to the CYPF Act. This option would amend section 241 so that the Court is required to review those orders that detain young people in Police custody at least once every 24 hours.</p> <p>This option needs to be implemented with option 4c as it would be anomalous for the legislation to not require mandatory reviews of both types of detention.</p>	<ul style="list-style-type: none"> • While it is current practice for orders detaining young people in Police custody to be reviewed every 24 hours, this option would ensure that the process is mandatory. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> A mandatory review process means young people will be less likely to spend time on remand in a Police cell. A shorter time on remand in a Police cell reduces the exposure the young person has to the negative effects of that cell and confines within an adult correctional environment.</p> <p><i>Approaches that protect the rights of the child and young person</i> Ensuring regular assessment of their circumstances while detained in a cell protects the rights of children and young people.</p> <ul style="list-style-type: none"> • <i>Durability:</i> The option strengthens the current best practice. • <i>Fairness and equity:</i> No implications identified. • <i>Interaction with other legislative provisions and planned reforms:</i> This option aligns with the proposed mandatory reviews of those detained in Youth Justice residences (option 4c). • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option is consistent with UNCROC (Articles 37 & 40). • <i>Compatibility with other government objectives:</i> This option also contributes to YCAP. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impacts:</i> As there are already practice guidelines which require Court review of detention in Police custody every 24 hours, it is assumed that making this a legislative requirement will not create further fiscal and operational impacts. • There is a risk that enshrining this protection in legislation would be considered superfluous. However, as noted above (option 4c), it would be anomalous for the legislation to address only mandatory reviews of detention in secure custody of the Chief Executive.

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>Option 4e</p> <p>Amend the CYPF Act to require that the Chief Executive must endeavour to establish a sufficient range and number of community-based settings</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i></p> <p>To ensure that full consideration and resource is given to ensuring there is a range of viable community based options available to decision-makers, this option would require that the Chief Executive of the new Ministry must endeavour to establish a sufficient range and number of community-based settings for children and young people in the Chief Executive's custody pending their Youth Court hearings.</p> <p><i>Legislative change</i></p> <p>Legislative change would be required to the CYPF Act to require that the Chief Executive must endeavour to establish a sufficient range and number of community-based settings for children and young people in the Chief Executive's custody pending their Youth Court hearings.</p>	<ul style="list-style-type: none"> • Will mean priority is given by the new Ministry to secure community-based placement options. • More, and a wider range of, community situations would mean that there are genuine alternatives for children and young people who would otherwise probably be detained in a Youth Justice residence. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i></p> <p>More, and a wider range, of community situations would mean that there are genuine alternatives for children and young people who would otherwise probably be detained in a Youth Justice residence. Therefore, fewer children and young people would be expected to be detained in a Youth Justice residence, so lessening the number of children and young people who experience the negative effects of such residences.</p> <p><i>Approaches that protect the rights of the child and young person</i></p> <p>If fewer children and young people are detained in a Youth Justice residence then fewer experience the negative effects of such residences.</p> <ul style="list-style-type: none"> • <i>Durability</i>: No implications identified. • <i>Fairness and equity</i>: No implications identified • <i>Interaction with other legislative provisions and planned reforms</i>: No implications identified. • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations</i>: This option is consistent with UNCROC. This proposal should reduce the number and length of stay of Māori rangatahi in Youth Justice residences while 'remanded.' • <i>Compatibility with other government objectives</i>. This option supports the Youth Crime Action Plan and Youth Crime BPS target. 	<ul style="list-style-type: none"> • <i>Fiscal and operational implications</i>: Ensuring there are sufficient community alternatives to always meet unexpected peaks in demand is likely to be problematic at times. This could be overcome by allowing the Chief Executive to have some flexibility in this obligation to provide community placements. It is proposed that this flexibility be provided by the use of the word "endeavour" and by not requiring the obligation to be enforceable. • Additional community-based placements would be needed (see indicative costings under option 4a).

Table 5: Option and impact analysis for supporting a positive future for children and young people who offend

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>Option 5a</p> <p>Non-regulatory option</p>	<p><i>Description</i> Currently there are no specific obligations in the legislation to successfully transition children and young people beyond the completion of the FGC. Currently there are very few transition supports to help build on the gains made during the completion of FGC plans and Youth Court orders and which address the drivers of offending and vulnerabilities that are community based.</p> <p>Development of transition plans would be driven by practice guidelines.</p> <p>No legislative change would be required.</p>	<ul style="list-style-type: none"> Issues would remain of vulnerable children and young people leaving the Youth Justice system and not being able to sustain the gains they made from particular FGC plans or Youth Court orders. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> The existing system allows for a sort of transition process for high end offenders completing supervision with residence order, they must also complete a supervision order.</p> <p><i>Approaches that protect the rights of the child and young person</i> Few protections are provided to young people leaving the current Youth Justice service.</p> <ul style="list-style-type: none"> <i>Durability:</i> No issues identified <i>Fiscal and operational impact:</i> No changes envisaged if stay with the status quo. Practice changes that respond to the concern could instead be focussed on training in better connecting residential and site social workers, whilst also linking with Police Youth Aid Officers. <i>Fairness and equity:</i> The current system only covers those who commit high end offences and receive supervision with residence orders. There is no transition provision for other offenders, which doesn't reflect that some lower end offenders may have high levels of vulnerability and need additional supports once their FGC is completed. 	<ul style="list-style-type: none"> <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> No issues identified. <i>Interaction with other legislative provisions and planned reforms:</i> it is possible that up to 20 young people could be escalated into the proposed care and protection Transition Service from those leaving the Youth Justice system. This would be if new care and protection issues are identified upon exit (it is likely that many of these would be children and young people who receive Supervision with Residence orders). The design of Intensive Intervention services is still being considered and may support this cohort of young people leaving the Youth Justice system.
<p>Option 5b</p> <p>Add a new principle to section 208 of the CYFP Act on transition supports for children and young people leaving the Youth Justice system</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i> This option would, by adding a new principle to section 208, require decision-makers to specifically consider transition supports, improve the transition of children and young people leaving formal Youth Justice services.</p> <p><i>Legislative change:</i> Legislative change would be required to amend section 208 of the CYPF Act to add a new principle to the effect that steps should be taken to consider what reasonable and practicable supports are required to transition children and young people from the Youth Justice system to encourage them to lead crime free lives.</p>	<ul style="list-style-type: none"> This option could be expected to reduce rates of re-offending post FGC plans and Youth Justice orders and also result in the general increased wellbeing of children and young people upon leaving the Youth Justice system and will help ensure transition needs are prioritised. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending</i> A strengthened focus on transition supports by decision-makers could be expected to reduce rates of re-offending and encouraging children and young people to live crime free lives.</p> <p><i>Approaches that protect the rights of the child and young person</i> A focus on better outcomes for children and young people, will help protect their rights.</p> <ul style="list-style-type: none"> <i>Durability:</i> No issues identified <i>Fairness and equity:</i> No direct impact identified. But likely to support improved outcomes for Māori who are over represented in Youth Justice statistics. <i>Interaction with other legislative provisions and planned reforms:</i> None envisaged beyond raising the age of the Youth Justice age settings. <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> compliant with UNCROC and supporting improved outcomes for Māori. <i>Compatibility with other government objectives:</i> This option supports the YCAP and BPS Youth Crime target. 	<ul style="list-style-type: none"> Data from 2015/16 shows that approximately 3,000 young people complete FGC plans each year. <i>Fiscal and operational impact:</i> This proposal is part of the identified Intensive Intervention Service cohort and cost estimates. Fiscal allocation for the proposed Intensive Intervention service is still to be agreed as the mechanism to support this cohort of young people.
<p>Option 5c</p> <p>Amend the functions of the FGC to include a new function to plan and support transitions</p> <p>Regulatory option</p> <p>PREFERRED OPTION</p>	<p><i>Description</i> This option would, by requiring FGCs to plan and support transitions, improve the transition of children and young people leaving formal Youth Justice services.</p> <p><i>Legislative change</i> Legislative change would be required to the CYPF Act to amend the functions of the FGC in section 258 to include, as a new function, measures to plan for and support the child or young person upon the completion of the FGC and any Youth Court order.</p>	<ul style="list-style-type: none"> This option could be expected to reduce rates of re-offending post-FGC plans and also result in the general increased wellbeing of children and young people upon leaving the Youth Justice system because it would encourage better and earlier transition planning. 	<p><i>Addressing the underlying causes of behaviours to prevent offending and re-offending:</i> A strengthened focus on transition supports could be expected to reduce rates of re-offend and encourage children and young people to live crime free lives.</p> <p><i>Approaches that protect the rights of the child and young person</i> A strengthened focus on transition supports a focus on better outcomes for children and young people, which in turn protects their rights.</p> <ul style="list-style-type: none"> <i>Durability:</i> No issues identified. <i>Fairness and equity:</i> Supports post-FGC or Youth Court 	<ul style="list-style-type: none"> <i>Fiscal and operational impact:</i> The fiscal allocation for the proposed Intensive Intervention service is still to be agreed. Design of this service, eligibility and costing will developed through the ongoing Budget process.

Option	Features	Implications and impacts	Benefits	Issues/Risks
			<p>Order will ensure gains are maintained.</p> <ul style="list-style-type: none"> • <i>Interaction with other legislative provisions and planned reforms:</i> None envisaged. • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations:</i> This option supports the YCAP and BPS Youth Crime target. 	

Options and impact analysis

75 Each of the options that were considered as part of the process of developing and deciding on a preferred proposal were considered and assessed against the key objectives and criteria outlined above (paragraphs 79-81). The results are summarised in the table below.

[--] = Much worse	[-] = Worse	[0] = Neutral	[+] = Better	[++] = Much Better
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A3: Preferred options highlighted

Options	Child-centred objectives	Durability	Fiscal and operational impact	Fairness and Equity	Legislative provision (including UNCROC)	Government objectives
Prevention of offending and early intervention once offending occurs						
Option 1a	0	0	0	0	0	0
Option 1b	++	0	0	+	++	++
Supporting a child-centred approach with the enhancement of the rights						
Option 2a	0	0	0	0	0	0
Option 2b	+	-	--	+	++	+
Option 2c	+	+	--	+	+	+
Option 2d	+	+	-	+	+	+
Supporting restorative justice opportunities for victims and young people						
Option 3a	0	0	0	0	0	0
Option 3b	+	+	0	+	++	+
Option 3c	+	--	0	--	0	-
Supporting community-based options as an alternative to remand in custody						
Option 4a	0	0	0	0	0	0
Option 4b	++	+	0	0	++	++
Option 4c	++	+	0	0	++	++
Option 4d	++	+	0	0	++	++
Option 4e	++	0	0	0	++	++
Supporting a positive crime free future for those children and young people						
Option 5a	0	0	0	0	0	0
Option 5b	++	0	-	+	++	++
Option 5c	++	0	-	+	++	++

UNCROC child impact assessment

76 Proposals were also assessed against New Zealand's obligations under UNCROC. They have been assessed as likely to impact positively on the lives of children and young people and their rights under UNCROC. They will do this in a number of ways, in particular by:

- supporting a focus on preventing offending and re-offending and young people's transition from the Youth Justice system. This will contribute to more opportunities for young people to fully realise their economic, social and cultural rights under UNCROC and avoid disruption to relationships and lives that can be associated with Youth Justice involvement

- they will support the development of services to better support Māori and other vulnerable groups to aim high and prevent and reduce risk of offending and re-offending
- they will reduce the risk of children and young people being held in custody for undue lengths of time
- they will provide more protection for young people's rights to a lawyer at the key decision-making point of an ITC FGC and reduce the risk of undue escalation of matters to Youth Court.

Discussion of preferred options

77 The combination of the following options is considered the best way in which to achieve legislation that will enable and support the new Ministry to provide improved Youth Justice services.

Option 1 - Principles to support prevention of offending and re-offending

78 Option 1b is preferred. This option is addressed in the Tranche 1 *Foundations for a Child-centred system RIS*.

79 It involves the inclusion of two general principles relating to prevention and early intervention in section 5 of the CYPF Act. Section 5 sets out generally applicable principles. This reflects the importance and relevance of prevention and early intervention to all parts of the system.

80 A regulatory approach was preferred because of the importance of prevention and early intervention to the system and to achieving the objectives of addressing the underlying causes of offending and helping children and young people to take responsibility for their actions and live crime free lives. Amending section 5 principles was also seen as the most enduring way of embedding these principles across all aspects of the Youth Justice system.

Option 2 - Supporting a child-centred approach with the enhancement of the rights young people in the Youth Justice system

81 Regulatory option 2d is the preferred option because it reflects a good balance between protecting children's rights and broader justice objectives of protecting public safety, supporting the needs of victims and maintaining trust in the justice system.

82 This option means that legal representation would be provided at ITC FGCs to those young people who commit the most serious offences. Approximately 500 to 800 cases or one third of ITC FGCs carry offences with an adult equivalent penalty of 10 years' imprisonment or more. Examples of serious offences include charges such as burglary, robbery, injury causing acts or homicide and charges sexual in nature.²⁶ These young people are more likely to have charges laid in the Youth Court following an ITC FGC with consequential adverse outcomes.

83 Option 2d requires legislative change to empower the Minister responsible for administering the CYPF Act to recommend the making of regulations. This would govern the eligibility, appointment and payment of State-funded legal representatives.

²⁶ Note that a young person can be charged with multiple events. Data from ITC FGCs held in 2011 and 2012 shows the percentage by offence category to ITC FGCs of alleged offending with burglary (38 percent), robbery (8 percent), injury causing acts or homicide (33 percent) and charges sexual in nature (3 percent).

84 The right to State-funded legal representation at ITC FGCs for cases involving serious offences could not be provided for by non-regulatory means. Other regulatory options were considered with access to legal representation provided at different points (at arrest or interview, and at ITC FGCs). While these would have provided more equitable access to the right to legal representation, it was considered that the costs of state funding for legal representation are not warranted in these other cases, given the diversionary purpose of an ITC FGC.

Option 3: Supporting restorative justice opportunities for victims and young people

85 Regulatory option 3b is the preferred option. It involves amending the CYPF Act to require FGCs to consider how they can reasonably and practicably achieve restorative justice outcomes. It achieves the objective of helping children and young people to take responsibility for their actions and live crime-free lives and is consistent with broader criminal justice concerns such as public safety.

86 The option of relying on non-regulatory means to better achieve restorative justice outcomes was considered. However, legislation was assessed as the better option because:

- it provides a strong platform for signalling the need to change to the different people and roles involved in the Youth Justice system
- it has enduring effect
- reliance on practice advice to achieve restorative justice outcomes has not been successful to date
- without legislative mandate, other criminal justice concerns like retribution are likely to prevail
- FGCs involve a mix of people with different concerns and legislation can help them work consistently and together on restorative outcomes.

Option 4: Supporting community-based options as an alternative to detention in custody

87 The preferred regulatory options of 4b, 4c, 4d and 4e are preferred because they best meet the objectives and criteria. They will ensure:

- more direction is given to those involved in administering Youth Justice about the need to consider community-based remand options
- reviews of custodial remand are undertaken every 14 days by the Youth Court unless the Court specifies another period of time
- detention in Police cells is reviewed every 24 hours
- the Chief Executive must prioritise sourcing community-based placements alongside finding residential placements.

88 These options are recommended because:

- they provide for more accountability and transparency in remand decisions and generation of community-based options in the system
- they are consistent with the objective of supporting and protecting children and young people's rights in the system

- the ensure that flexibility remains in the system, while still signalling to all parts of the Youth Justice system that we need to identify community-based remand alternatives where possible at the earliest point in time
 - they reduce ambiguity in how to interpret the legislation for the judiciary, the courts and support staff from across Police and the new Ministry.
- 89 Remand decisions impact on children and young people’s liberty. The wrong decision can have significant adverse impacts on a child and young person and wider society. The issue is therefore important enough to warrant legislative change in terms of reviews of custodial remand and detention in police custody. Legislation in this area will support transparent and accountable decision-making.
- 90 Although non-regulatory means could be used to require the Chief Executive to source community-based remand placements alongside residential placements, legislative change is necessary to balance the current legislative duty on the Chief Executive to endeavour to establish a sufficient range of residences. Without this change in legislation there is the risk that the new operating model involving more focus on community-based placements will not be sufficiently supported.
- 91 Similarly, legislative change is necessary to amend the principle in section 208(d) of the CYFP Act that is currently worded to only apply to situations where a child or young person has been proven to commit an offence. A non-regulatory mechanism cannot be used to make this change to an existing legislative principle.
- 92 These proposals will support the new operating model objectives including to reduce the likelihood of reoffending and support children and young people to lead crime free lives. It is intended to drive those in the system, including courts, to prioritise considering the circumstances of young people remanded in custody. It will reduce the time young people spend with other youth offenders and the negative effects that custody can have on young people. It will free up Youth Justice beds for the most serious and high-risk offenders.

Option 5: Supporting a positive future for those children and young people who offend

- 93 Regulatory options 5b and 5c are the preferred options because in combination they best meet the objectives and criteria.
- 94 These options will help embed and support a focus in the new operating model on a young person’s transition from the Youth Justice system. Practice approaches have been used to date to try and instil this focus amongst the workforce.
- 95 However, a practice focus has failed to make the change. Legislation is necessary to send a stronger and more enduring signal about the need for a young person’s transition out of the Youth Justice system to be properly planned for and considered in the course of decision making about that young person’s current state.
- 96 A successful transition out of the Youth Justice system is crucial to a young person living a crime-free life and achieving positive life outcomes. An early focus on transition will advance the Government’s social investment goals and supports the YCAP and Better Public Service Youth Crime target.
- 97 It will reinforce and assist young people who are also in the care of the State and involved in offending to transition to crime free lives. It will support better outcomes for Māori who are disproportionately high in most Youth Justice statistics. It will also create opportunities to link children and young people to iwi and Māori organisations through the transition service and will support Treaty of Waitangi obligations.

Financial and operational implications of preferred options

- 98 Cost estimates set out in this section are indicative, and detailed service design will need to be completed for definitive costs. However, costs can be scaled and phased over time to respond to the design of the new operating model, legislation commencement decisions, and the investment approach. Final funding decisions will be sought through the Budget process.
- 99 The following preferred options have direct fiscal and operational impacts:
- the appointment of State-funded legal representation at certain FGCs. This option has cost implications estimated at **[Section 9(2)(f)(iv) OIA]**²⁷. Expansion of a State-funded legal representation service outside Court will have administrative implications. The appointment mechanism has yet to be determined and there will be costs associated with establishing and administering this new scheme within the new Ministry.
 - mandatory Youth Court reviews every 14 days of detention placements in secure custody. The estimated costs to the new Ministry of this proposal²⁸ for year one could be **[Section 9(2)(f)(iv) OIA]** for year three²⁹ The additional indicative costs for Police is **[Section 9(2)(f)(iv) OIA]** for the Ministry of Justice.
- 100 If the proposals are agreed to, there will need to be transition phasing to allow time for service design and implementation, including workforce capacity.
- 101 Youth Justice prevention, early intervention and transition costs associated with accessing Intensive Intervention supports for 14-16 year olds (option 1b) will be part of the costing and design of the Intensive Intervention service.
- 102 Savings will accrue from the phased introduction of the new operating model through reducing the use of new spend. This will be attributed to:
- reductions in Youth Justice intake (with effect of prevention and early intervention supports)
 - fifteen percent reductions in re-offending rates (benefits of youth designed system and therapeutic supports; and proposed transition supports)
 - operational efficiencies in management of the residential portfolio
 - more effective but lower cost alternatives (eg move away from secure residential placements where appropriate)
 - adoption of more evidence-based, culturally responsive services.
- 103 It will take five years before the new Youth Justice model is fully operational to generate effect of changes.

²⁷This is for the adjusted length of time for ITC FGCs with a third of ITCs warranting a legal representative due to seriousness of offending. Note that approximately 36 percent of ITC cases would be provided with a Youth Advocate due to escalation to the Youth Court.

²⁸ As there are already practice guidelines which require Court review of detention in Police custody every 24 hours, it is assumed that making this a legislative requirement will not create further fiscal and operation impacts.

²⁹Cost assumptions are based on the hourly rate for a Social Worker multiplied by average transport costs by distance to Youth Court setting.

Table One: Indicative Youth Justice costs for 14-16 year olds and possible phasing (all are subject to service design, implementation and budget decisions)

PHASING – Indicative costs of 14-16 year olds only (\$ millions)			
Options 14-16 year olds	Year 1	Year 2	Year 3
Legal Representation	[Section 9(2)(f)(iv) OIA]		
Review of Remand Placements			
Group Homes			
Supported Bail			
TOTAL			

104 Based on these estimates, total estimated costs **[Section 9(2)(f)(iv) OIA]** (for the current age range of Youth Justice system).³⁰ The only direct costs of the legislative proposals relate to the options around legal representation and the mandatory Court reviews of custodial remands. The review of remand placement costs include the Police costs **[Section 9(2)(f)(iv) OIA]** and Ministry of Justice costs **[Section 9(2)(f)(iv) OIA]** for the review of remand placements for 14-16 year olds.³¹

An investment approach

105 Proposals in this RIS support an investment approach to prevent offending. It is estimated the present value of saving a 14-year old high risk young person from a life of crime to range from US \$2.6 to \$5.3 million (NZ \$3 to 6.2 million).³²

Consultation

106 The Expert Panel completed the high-level design of a new operating model, informed by a collaborative process with children, young people, families, caregivers, victims, experts from across the system, and an extensive review of local and international research.

107 The Expert Panel included interviews with six young people who were in Youth Justice residences. The themes of work were echoed through consultation done with 24 young people in May 2016 at the Te Maiaho Youth Justice Residence. This was part of the YCAP feedback process to identify themes and issues facing young people in custodial remand or with Supervision with Residence Orders.

108 Officials have consulted on the proposals with the YCAP agencies (CYF, the New Zealand Police, the Ministry of Justice, the Ministry of Health, the Ministry of Education, the Department of Corrections and Te Puni Kōkiri). Treasury has also been consulted on the proposals.

109 Officials also met with the Children’s Commissioner and his Office, and the Principal Youth Court Judge to discuss the work.

Conclusions and recommendations

110 Following consideration of the options analysis, the options below are recommended:

³⁰ These costs are indicative only, as the design of these community-based alternatives is still to be undertaken.

³¹ Police costs are based on the charge out rate of \$86 per hour (with half cases assuming Police already in Court at 15 minute of their time, and half require special call out from the stations at 2 hours. Ministry of Justice costs include Court time and staffing costs.

³² Cohen MA & Piquero AR. *New Evidence on the Monetary Value of Saving a High Risk Youth*. J Quant Criminol (2009) 25:25–49.

- to prevent offending by children and young people and early intervention once offending occurs, Option 1b. This reflects proposals in the *Child centred foundations RIS*.
- to supporting a child-centred approach with the enhancement of the rights of young people in the Youth Justice system, Option 2d. This requires State-funded legal representation at FGCs for young people at ITC FGCs for offences carrying a penalty of 10 years' imprisonment or more.
- to support restorative justice opportunities for victims and young people, Option 3b. This involves amending the functions of FGCs to require them to consider how they can reasonably and practicably achieve restorative justice outcomes.
- to support community-based options as an alternative to detention in custody, the following regulatory options:
 - Option 4b strengthens the intent that children or young people alleged to have committed offences should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public.
 - Option 4c requires the Court to review those orders that detain children and young people in the secure custody of the Chief Executive (Youth Justice residences) at least once every 14 days unless the court specifies another period of time.
 - Option 4d requires the Court to review those orders that detain young people in Police custody at least once every 24 hours.
 - Option 4e places a duty on the Chief Executive to endeavour to establish a sufficient range and number of community-based settings for children and young people in the Chief Executive's custody pending their Youth Court hearings.
- To support a positive future for those children and young people who offend, this will be addressed through regulatory options 5b and 5c. This involves the addition of a new principle that steps should be taken to consider what reasonable and practicable supports are required to transition children and young people from the Youth Justice system. It also involves amending the functions of the FGC to plan for and support the child or young person upon the completion of the FGC and any Youth Court order.

Implementation plan

111 The proposals form part of broader reform to the operating model for responding to vulnerable children and families. It is proposed that the future operating model be established through a cross-agency Transformation Programme³³ to implement the proposed changes, operating according to a robust programme management system that includes reporting and monitoring, decision-making protocols, change

³³ SOC agreed that the governance arrangements for the Transformation Programme will include: the Chief Executive of the Ministry of Social Development who would be responsible for establishing and managing the Transformation Programme; a reconstituted Vulnerable Children's Board who will provide advice on the establishment and management of the programme of work and then provide the Minister for Social Development and the Ministerial Oversight Group with advice on an ongoing basis; and the Ministerial Oversight Group, which would comprise the Ministers of Finance, Health, Justice, Education, Social Development, Corrections, Police, Whānau Ora and Māori Development, will oversee and direct the reform process [SOC-16-MIN-0023 refers].

control, change management, stakeholder management, risks and issues management, and benefits realisation.

- 112 Funding to meet additional costs associated with the full business case will be sought in subsequent budgets.

Monitoring, evaluation and review

- 113 These proposals form part of a large set of reforms to develop a new operating model for responding to vulnerable children, young people and their families. The success of the new system will be measured in a variety of ways by the new Ministry. This will include regular monitoring and reporting.
- 114 Further work will be required with Treasury and the State Services Commission to build a detailed performance framework. On 30 March 2016, SOC noted that the Minister for Social Development expects that the performance management framework for the operating model will include the following dimensions [SOC-16-MIN-0022 refers]:
- improved long-term outcomes for those vulnerable children and young people
 - reduced liability for future social, economic and fiscal costs
 - reduction of churn in the number of care placements and stability of care through long-term relationships in safe and loving homes
 - reduction in the rate of statutory response due to increased prevention and intensive support for children and families and whānau
 - reduction of re-abuse and re-victimisation (including in care)
 - reduction of re-offending rates for youth offenders
 - reduction in the over-representation of Māori children and young people in care and the Youth Justice system
 - improved outcomes for Pacific children and young people.
- 115 Work is being progressed to gather data on the voices and experiences of those the system is designed to serve, starting with children and young people, which could be used to inform monitoring of the system.
- 116 The adoption of an investment approach also means that the overall impact of the new Ministry can be measured through assessing the reduction in the overall future cost (forward liability) for vulnerable children and young people who have contact with the Youth Justice system. The precise measure and associated targets can be determined once the actuarial model is in place.